

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

WOLLIE STAPP

Plaintiff

v.

Civil Action No. 1:93CV295-D-D

COMMERCIAL LIFE INSURANCE COMPANY

Defendant

MEMORANDUM OPINION

This matter comes before the undersigned on defendant Commercial Life Insurance Company's ("Commercial Life") motion for summary judgment on plaintiff Wollie Stapp's claims for punitive and extra-contractual damages. The original complaint also included a claim for accidental death insurance proceeds. Since the filing of this cause of action, Commercial Life paid the death benefits plus interest from April 2, 1993, the date of receipt of the claim. The plaintiff agrees that the benefits due under the policy have been paid, but claims that Commercial Life's earlier denial of benefits warrants punitive and extra-contractual damages. Because the plaintiff concedes that the defendant has tendered the insurance proceeds plus interest from the date of the initial claim, the defendant's motion for summary judgment on that claim will be granted. As such, the only issues presently pending before the court are the plaintiff's claims for punitive and extra-contractual damages. After reviewing the record evidence before this court, the undersigned finds that punitive and extra-

contractual damages are not warranted; accordingly, the defendant's motion for summary judgment will be granted.

FACTUAL BACKGROUND

On or about March 30, 1990, Commercial Life issued its group insurance policy no. GSR 10605 to First Columbus National Bank ("FNBC"), providing accidental death and dismemberment benefits for all members of FNBC's First Club checking accounts. Said policy provided benefits in the amount of \$25,000.00 per account, with benefits available being determined by dividing \$25,000.00 by the number of holders of the account. The policy stated:

If more than one individual has signed a signature card, the amount of insurance shall be determined by the number of people insured. That is, the amount of principal sum is divided by the number of signatures on the signature cards except for those names specifically excluded.

Mr. and Mrs. Wollie F. Stapp were joint holders and members of a First Club checking account, through FNBC and were insureds under the subject policy during all relevant times.

On September 10, 1990, Mrs. Stapp died. On or about March 26, 1993, FNBC submitted a claim for benefits on behalf of Mr. Stapp for benefits under the subject policy as a result of his wife's death. Commercial Life received with the claim a Certificate of Death for Mrs. Stapp.

The Certificate of Death stated the immediate cause of death as a pulmonary embolus and mentioned that other significant conditions contributing to the death were renal failure and depression. The Certificate showed her death to be a result of

natural causes and not due to an accident. The cause of death section of the Certificate was completed by Dr. Thomas D. Wooldridge, the deceased's attending physician.

Subsequent to receiving the claim, the defendant received a letter dated March 2, 1993, from Dr. Wooldridge. In his letter, Dr. Wooldridge stated that the "cause of her death is not completely clear but possibly could have been related to the fall earlier." The evidence does reflect that Mrs. Stapp had fallen on or about August 31, 1990, at which time she either fractured or severely injured her pelvic bone on the right side, and also injured her head. The defendant does not argue that the fall was not accidental, but claims the denial of the claim was reasonable because there was evidence that the fall was not the proximate cause of death.

In any event, upon receiving the claim accompanied by the Death Certificate, Commercial Life began the process of obtaining medical records from all healthcare providers, clinics, hospitals and physicians, including Dr. Wooldridge. The record reflects that the defendant obtained medical records pertaining to Mrs. Stapp from the Nephrology & Hypertension Associates, North Mississippi Medical Center, and Dr. Wooldridge.¹ The defendant by letter dated

¹ Commercial Life sent second and third request to Dr. Wooldridge to obtain complete medical records of the deceased. Additionally, the defendant made second and third request to North Mississippi Medical Center.

By letter dated April 16, 1993, the company also requested a

April 16, 1993, requested that the attending physician complete and return an attending physician's statement. The evidence further indicates that Commercial Life's claims examiner had to follow up on the request for a physician's statement and did so by telephone on May 11, 1993. The attending physician's statement dated May 7, 1993, was eventually received by Commercial Life and indicated that the cause of death was likely the result of preexisting conditions. Specifically, Question two asked Dr. Wooldridge to describe the "precise location, nature of injuries and their extent." Dr. Wooldridge stated:

Medullary cystic disease with renal failure
Renal transplant with progressive renal failure
Psychiatric problems Cryptococcoses

Commercial Life reviewed the entire claims file, including the letter from Dr. Wooldridge, his attending physician's statement, the Certificate of Death, and all other medical records obtained. Admittedly, the defendant did not follow up or seek any additional medical review or interpretation of the file, but relied on their own knowledge in determining whether to pay the claim. The plaintiff asserts that the defendant should have had medical experts review the file. The record reflects that Mrs. Stapp was being treated for several illnesses prior to her death, some of which may well have contributed to her death. Commercial Life

written explanation from the plaintiff concerning the reason for the late submission of the claim.

argues that the record before it did not show with any degree of medical certainty a causal connection between Mrs. Stapp's August 21, 1990, accident and her September 10, 1990, death.

On or about June 14, 1993, by letter, Commercial Life denied Mr. Stapp's claim for benefits under the subject policy. The letter stated:

Based on medical reports we have received from North Mississippi Medical Center and Dr. Wooldridge, we have concluded she did not die from an accident directly and independently of all other causes, and have no alternative but to deny this claim.

In denying the claim, Commercial Life invited the plaintiff to submit additional information if any should come available.

Plaintiff filed his original complaint on September 8, 1993, in the Circuit Court of Lowndes County, Mississippi. The cause of action was removed to this court on October 5, 1993. In December 1993, Commercial Life received a copy of letter signed by Dr. Wooldridge, dated September 22, 1993. The letter was in response to Commercial Life's request for production of documents. In this second letter Dr. Wooldridge stated, for the first time, his opinion that Mrs. Stapp "died as a result of a pulmonary embolus which was caused by pelvic vein thrombosis which was precipitated by the fall and previous trauma to her pelvic region."

Based upon the new information, Commercial Life reconsidered and decided to pay the claim. On or about February 8, 1994, Commercial Life tendered the death benefit amount plus interest

from April 2, 1993, the date of the original receipt of the claim for benefits. The plaintiff seeks to recover punitive and extra-contractual damages because of the defendant's actions in initially denying the claim.

Summary Judgment Standard

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. F.R.C.P. 56(c). The party seeking summary judgment carries the burden of demonstrating that there is an absence of evidence to support the non-moving party's case. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 106 S. Ct. 2548, 2553, 91 L.Ed.2d 265 (1986). After a proper motion for summary judgment is made, the non-movant must set forth specific facts showing that there is a genuine issue for trial. Hanks v. Transcontinental Gas Pipe Line Corp., 953 F.2d 996, 997 (5th Cir. 1992). If the non-movant sets forth specific facts in support of allegations essential to his claim, a genuine issue is presented. Celotex, 477 U.S. at 327, 106 S.Ct. at 2554. "Where the record, taken as a whole, could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L.Ed.2d 538 (1986); Federal Sav. and Loan

Ins. v. Krajl, 968 F.2d 500, 503 (5th Cir. 1992). The facts are reviewed drawing all reasonable inferences in favor of the non-moving party. King v. Chide, 974 F.2d 653, 656 (5th Cir. 1992).

DISCUSSION

I.

To recover punitive damages under Mississippi law for an insurer's bad faith refusal to pay a claim one must show two things: (1) that the insurer had no legitimate or arguable reason to deny payment on the claim and (2) that the insurer acted with gross and reckless disregard for the insured's rights so that it becomes a heightened tort, i.e., conduct inferring malice, fraud or deceit, gross negligence, wilful or wanton disregard of Bank's rights. Hall v. Allstate Life Ins. Co., 737 F.Supp. 1453, 1456 (N.D.Miss. 1988)(Davidson, J.)(citing Life and Casualty Ins. Co. of Tenn. v. Bristow, 529 So.2d 620, 622 (Miss. 1988)).

Whether Commercial Life had an arguable reason to deny Mr. Stapp's claim is an issue of law for the court. Dunn v. State Farm Fire & Cas. Co., 927 F.2d 869, 873 (5th Cir. 1991)(citations omitted). At the summary judgment stage on the issue of punitive damages, the plaintiff has the burden to show that there exists evidence from which a reasonable jury could find (a) that the defendant lacked a reasonably arguable basis to deny plaintiff's claim, and (b) that defendant acted with malice or such gross negligence as would evidence a reckless disregard for the rights of

the plaintiff. Hall, 737 F.Supp. at 1456. The court is of the opinion that the plaintiff has failed to make such a showing.

The evidence indicates that on or about March 26, 1993, FNBC submitted a claim on behalf of the plaintiff. Along with the claim, Commercial Life received Mrs. Stapp's Certificate of Death, which was completed by her attending physician, Dr. Wooldridge. The Certificate of Death specifically stated that the immediate cause of death was pulmonary embolus and further stated that other conditions contributing to death were renal failure and depression. The section on the certificate marked "Use if death NOT due to natural causes" was not filled out indicating that Mrs. Stapp's death was a result of natural causes and not due to an accident.

At or about the time the claim was submitted, Commercial Life also received a letter of Dr. Wooldridge dated March 2, 1993. The doctor stated in the letter that the "cause of her death is not completely clear but possibly could have been related to the fall earlier. This was not diagnostic as per the CT scan." Certainly the Certificate and the letter create questions as to the cause of Mrs. Stapp's death which would directly impact coverage under the subject policy and provide the defendant with an arguable reason to deny the claim.

In any event, Commercial Life began the process of obtaining medical records from all healthcare providers, clinics, hospitals, and physicians. The defendant obtained records from Nephrology & Hypertension Associates, North Mississippi Medical Center, and Dr.

Wooldridge. By letter dated April 16, 1993, Commercial Life separately requested a written explanation concerning the reason for the late submission of the claim. The same letter requested the plaintiff to have Dr. Wooldridge complete and return an attending physician's statement. In response to a question which asked Dr. Wooldridge to describe the "precise location, nature of injuries and their effect", the doctor in no way indicated that the death was the result of her previous fall.

Commercial Life reviewed the record which indicated that Mrs. Stapp had been and was being treated for several illnesses at the time of her death.² As submitted by the defendant, the evidence in no way showed with any degree of medical certainty, or otherwise, a causal connection between Mrs. Stapp's accidental fall on August 21, 1990, and her death on September 10, 1990. Accordingly, Commercial Life denied the claim.

The plaintiff argues that Commercial Life failed to adequately investigate the claim because the autopsy report and Dr. Wooldridge's aforementioned letter indicated that her death may have been the result of her fall. Apparently, the plaintiff claims that Commercial Life's review of the medical records it had obtained, including the Death Certificate, the attending physicians

² The record indicates that she suffered at one time or another from several illnesses. An exhaustive list of these illnesses is unnecessary for the disposition of the present motion.

statement, and Dr. Wooldridge's first letter dated March 2, 1993, fell short of the insurer's duty of investigation. And further, that Commercial Life had no legitimate or arguable reason for denial of the claim even after such review.

This court addressed a very similar argument in Hall, supra. In Hall, the attending physician's statement indicated that an accident was the sole cause of plaintiff's loss. However, other evidence, including later responses by the attending physician and hospital records, indicated that other preexisting conditions may have contributed to the loss. The undersigned found that even though there was evidence that the loss was covered, the defendant was justified in denying payment of the claim based on the contradicting evidence. Accordingly, the court granted defendant's motion for summary judgment on Hall's claim for punitive damages.

In the case sub judice, the evidence is even more compelling in support of defendant's position that a legitimate or arguable reason for denial was present. The only evidence available to Commercial Life indicating Mrs. Stapp's death may have been the result of an accident was Dr. Wooldridge's comment in his March 2 letter stating that the cause of death "possibly could be have been related to the fall earlier". All other evidence before the insurer indicated that her death was of natural causes. Medical records, including the Death Certificate and the attending physician's statement, which were completed by Dr. Wooldridge,

certainly support the defendant's position that Mrs. Stapp died, at least partially, as a result of preexisting conditions. "It is well settled that an insurance company is entitled to rely upon information from the insured's doctor in making its decision about benefits." Bristow, 529 So. 2d at 623-24. The undersigned is completely satisfied that Commercial Life had an arguable reason for denying accidental death benefits under the subject policy. Commercial Life's reliance on the evidence before it was reasonable and manifestly does not warrant punitive damages.

Although the court need not address the second requirement it is compelled to do so. There is absolutely no evidence indicating malice or reckless disregard for the plaintiff's rights. Mrs. Stapp died on September 10, 1990. Mr. Stapp, through FNBC, filed a claim for benefits under the subject policy on or about March 26, 1993. Commercial Life investigated the claim and discovered credible evidence indicating that the death may not have been the result of an accident as required for coverage under the subject policy. On or about June 14, 1993, based on the evidence before it, Commercial Life denied the claim. The denial letter invited the plaintiff to submit additional information in the event that he did not agree with the decision. The plaintiff filed this cause of action on September 8, 1993. During discovery, Commercial Life became aware for the first time of a letter opinion by Dr. Wooldridge dated September 22, 1993, which indicated that Mrs.

Stapp's death was likely the result of her accidental fall. Based upon the new information, Commercial Life reconsidered and decided to pay the claim. On or about February 8, 1994, Commercial Life tendered the benefit amount plus interest from the date of the original receipt of the claim. It is the opinion of the court that a reasonable juror could not find that defendant lacked an arguable reason to deny the claim or that defendant acted with malice. Therefore, defendant is entitled to summary judgment on the claim for punitive damages.

II.

Mr. Stapp also has a claim for extra-contractual damages. The 5th Circuit recently addressed the issue of whether Mississippi law will allow recovery for extra-contractual damages in situations where, as here, the defendant had an arguable reason for denial. Hans Const. Co. v. Phoenix Assur. Co. New York, 995 F.2d 53, 55-56 (5th Cir. 1993). The court found that, in light of the Mississippi Supreme Court's findings in Universal Life Ins. Co. v. Veasley, 610 So. 2d 290 (Miss. 1992), reh'g denied, January 8, 1993, Mississippi will allow extra-contractual damages for failure to pay on an insurance policy only where there is no arguable reason for such failure. Hans Const., 995 F.2d at 56. This court agrees with the holding in Hans Const.. An arguable reason, therefore, shields the insurance company from liability for both punitive and extra-contractual damages. As noted earlier, Commercial Life had an

arguable reason for denying Stapp's claim. Accordingly, summary judgment in favor of the defendant on the extra-contractual damages claim is proper.

CONCLUSIONS

On or about February 8, 1993, Commercial Life paid death benefits plus interest from the date of receipt of the claim. Accordingly, the only issues pending before this court are the plaintiff's claims for punitive and extra-contractual damages. This court is of the opinion that a reasonable juror could not find that defendant lacked an arguable reason to deny the claim or that defendant acted with malice. Therefore, the defendant's motion for summary judgment on the plaintiff's claims for punitive and extra-contractual damages will be granted.

An order in accordance with this memorandum opinion shall issue this day.

THIS ____ day of November. 1994.

United States District Judge

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WOLLIE STAPP

Plaintiff

v.

Civil Action No. 1:93CV295-D-D

COMMERCIAL LIFE INSURANCE COMPANY

Defendant

FINAL JUDGMENT

Pursuant to a memorandum opinion issued this day, it is hereby
ORDERED that:

1) defendant Commercial Life Insurance Company's motion for summary judgment on the plaintiff Wollie Stapp's claim for insurance proceeds be, and it is hereby, GRANTED;

2) defendant's motion for summary judgment on plaintiff's claims for punitive and extra-contractual damages be, and it is hereby, GRANTED;

3) this cause be, and it is hereby, **DISMISSED WITH PREJUDICE.**

ORDERED this ____ day of November, 1994.

United States District Judge